IN THE

SUPREME COURT OF THE UNITED STATES

No._____

EDDIE GRIFFIN,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JULIAN HARTRIDGE, JR., ESQ.
902 Realty Building
Savannah, Georgia

SAMUEL A. CANN, ESQ.
902 Liberty Bank Bldg.
Savannah, Georgia

Attorneys for Petitioners

INDEX

	Page
Reference to Opinions	1
Jurisdiction	2
Question Presented for Review	2, 3
Constitutional Provision Involved	3
Statement of Case	3, 4
Statement of Law and Argument	4, 5
Certificate of Service	6

TABLE OF CASES

Salinger vs. U. S.	2, 4
U. S. vs. Barrorata	2, 4

APPENDIX

Appendix "A", Opinion of Fifth Circuit Court of Appeals 7, 8

Appendix "B", Judgment and Entry of Judgment of Fifth Circuit Court of Appeals 9

Appendix "C", Order of Fifth Circuit Court of Appeals Denying Rehearing 10

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM 1964

EDDIE GRIFFIN,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

No._____

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REFERENCE TO OPINIONS

There were no opinions rendered by the trial judge in this case.

All proceedings had until this case reached the Fifth Circuit Court of Appeals for The United States of America are contained in the records of the court below (United States District Court) nine copies of which have been submitted with this petition.

The opinion of The United States Court of Appeals for The Fifth Circuit in affirming the judgment of The United States District Court for the Southern District of Georgia is appended to this petition and is marked Appendix "A".

JURISDICTION

The grounds upon which the jurisdiction of the Supreme Court of the United States of America is invoked are set out as follows:

(a) The judgment of the United States Court of Appeals for The Fifth Circuit rendered on the 31st day of March, 1964. and entered on the same date affirming the judgment of the lower court in this case is in conflict with a decision of this Honorable Court as set out in the case of Salinger vs. U. S.: 272 U. S. Reports, Page 542. The judgment of The Fifth Circuit Court of Appeals is appended as appendix "B" to this petition.

(b) That said judgment is in conflict with another U. S. Circuit Court of Appeals' decision, said decision being U. S. vs. Barrorata et al, 45 Fed. Supp. 38.

(c) That the judgment complained of contravenes the VI amendment to the Constitution of the United States of America.

That the Fifth Circuit Court of Appeals denied your petitioner's motion for a rehearing on the 5th day of May, 1964. The Copy of said order being appended hereto as Appendix "C".

QUESTION PRESENTED FOR REVIEW

The sole question presented for review is:

Where the only witness offered by the government testifies that he delivered the unstamped whiskey to Eddie Griffin and does not identify the defendant in the court room as the one and same Eddie Griffin to whom he delivered the whiskey and the defendant takes the stand and denies the delivery of any whiskey to him by the government's witness and no other evi-

dence is introduced to point out the defendant or identify him as the one who possessed the whiskey is this sufficient to convict the defendant? Furthermore does this not deprive the defendant of his right to be confronted by witnesses against him as set out in amendment VI to the Constitution of the United States of America?

CONSTITUTIONAL PROVISION INVOLVED

Amendment VI to the Constitution of The United States of America. (U.S.C.A. Amend. 6-14.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF CASE

The petitioner was indicted by a grand jury in the Savannah Division of The Southern District of Georgia in a one count indictment charging the petitioner with possessing unstamped whiskey contrary to the laws of the United States of America. Petitioner pled not guilty, was tried by the Court sitting as judge and jury, and found guilty and was sentenced to a term of one year. Petitioner filed a timely motion for a new trial, upon hearing same the motion was denied, petitioner filed a timely notice of appeal and said case was appealed to the Fifth Circuit Court of Appeals. The Fifth Circuit Court of Appeals affirmed the judgment of the lower court on the 31st day of

March, 1964, and a timely motion for a rehearing was filed. The Fifth Circuit Court of Appeals denied the rehearing and signed an order to that effect on the 5th day of May, 1964.

The only testimony offered by the government on the trial of the case was given by one C. A. Boatheimer who testified as follows, "I delivered fifty gallons of non-tax paid whiskey to Eddie Griffin at a store on the corner of 31st and Burroughs Streets in Savannah." The defendant Griffin took the stand and denied possession or delivery of the whiskey.

STATEMENT OF LAW AND ARGUMENT

Petitioner sets forth the following grounds for allowing his petition for a Writ of Certiorari:

1. The judgment in the instant case was inconsistent with and repugnant to the said VI amendment to the Constitution of the United States of America as was held in U. S. v. Barrorata et al, 45 Fed. Supp. 38 and in Salinger vs. U. S.; 272 U. S. Reports, Page 542. It was held in the above cited cases that the defendant in a criminal case is entitled to be confronted with all the witnesses against him, and this is a common law right which was carried into the Constitution by the VI Amendment.

2. In this case the government failed to prove either by direct or circumstantial evidence that the petitioner Eddie Griffin was the one, the government's witness referred to in said witness' testimony concerning the illegal whiskey transaction. This is a contravention of the VI Amendment to the Constitution of the United States which therein provides "that the accused shall be confronted with witnesses against him." There was a total failure of identity of your petitioner as being

the same person the government's witness delivered the whiskey to as he never identified your petitioner in the trial of the case as being the Eddie Griffin he was referring to in his testimony.

Petitioner prays that the writ of certiorari issue under the Seal of this Court, and that the judgment of said United States Court of Appeals for the Fifth Circuit be reversed by this Honorable Court; and for such further relief as to this court may seem proper.

Respectfully submitted.

Attorneys for Petitioner

JULIAN HARTRIDGE, JR.
902 Realty Building
Savannah, Georgia

SAMUEL A. CANN
902 Liberty Bank Building
Savannah, Georgia

CERTIFICATE OF SERVICE

We hereby certify that we are attorneys of record for the petitioner in the within and foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit; and

We further certify that we have this day caused a copy of said petition to be served on Counsel for the Respondents, by depositing a true and correct copy of the same, with adequate postage affixed, and properly addressed to the following:

Solicitor General of the United States
Department of Justice
Washington 25, D. C.

The Honorable Donald Fraser
United States District Attorney
United States Post Office Building
Savannah, Georgia

MAY 28 '64

Attorneys for Petitioner

JULIAN HARTRIDGE, JR.
902 Realty Building
Savannah, Georgia

SAMUEL A. CANN
902 Liberty Bank Building
Savannah, Georgia

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20751

EDDIE GRIFFIN,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Georgia.

(March 31, 1964.)

Before MAGRUDER,* JONES and GEWIN, Circuit Judges.

PER CURIAM: The appellant was convicted of the possession of non-tax-paid whiskey. As in the case of *Delegal v. United States*, decided this day, the question is presented as to whether the failure of the Government witness to point out in the court room the appellant as the person to whom the delivery of the non-tax-paid whiskey had been made, is revers-

---

* Senior Circuit Judge of the First Circuit, sitting by designation.

ible error. The question was not raised at the trial except as it might have been presented by the contention generally that the evidence was insufficient. We think that the evidence before the court was ample to justify the conclusion that the offense was committed by the appellant Griffin, and that the jury could properly so infer.

The judgment of the district court is

AFFIRMED.

APPENDIX "A"

Adm. Office, U. S. Courts—E. S. Upton Printing Co., N. O., La.

United States Court of Appeals
FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20751

D. C. Docket No. 16053 — Criminal

EDDIE GRIFFIN,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Georgia.

Before MAGRUDER.* JONES and GEWIN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

* Senior Circuit Judge of the First Circuit, sitting by designation.

March 31, 1964

Issued as Mandate:

APPENDIX "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20751

EDDIE GRIFFIN,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Georgia.

(May 5, 1964)

ON PETITION FOR REHEARING

Before MAGRUDER,* JONES and GEWIN, Circuit Judges.

PER CURIAM:

IT IS ORDERED That the petition for rehearing in the above entitled and numbered cause be, and it is hereby DENIED.

* Senior Circuit Judge of the First Circuit, sitting by designation.

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1168

EDDIE GRIFFIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial to the court in the United States District Court for the Southern District of Georgia, a jury trial having been waived, petitioner was convicted of having willfully possessed untaxed whiskey, in violation of 26 U.S.C. 5205(a) (2) and 5604(a) (1) (R. 1, 2). He was sentenced to imprisonment for a year and a day (R. 2, 11-13). The court of appeals affirmed *per curiam* (R. 26-27, 28; Pet. App. 7-8, 9). 329 F.2d 495.

There is no substance to petitioner's contentions (Pet. 4-5) that he was not confronted at the trial by his accusers nor properly identified as the one to whom delivery of the untaxed whiskey was made. A.T.U. Agent Boatheimer testified that in November 1961 he was working in an undercover capacity for a liquor law violator in the Savannah area, and that on the night of November 20, 1961, he was told that "the whiskey was to go to Eddie Griffin" (R. 4-8). The following transpired (Emphasis added.) (R. 4, 5, 8):

> Q. [by government counsel] Did you have occasion on that date to contact one *Eddie Griffin, the defendant in this case?*
>
> A. Yes, I did.
>
> Q. Tell us about that—What happened?
>
> A. On Monday, November 20th, 1961 I picked up fifty gallons of non-tax paid whiskey at the State Line Truck Stop in South Carolina on Highway 17 and delivered it to a store at the Corner of 31st and Burroughs Street here in Savannah. Actually, I parked in front of the store and *Eddie* [*G*]*riffin* was summoned from the store and came out and he was told the whiskey was here, in the car which I was driving. * * * *Eddie Griffin* called three colored men who were across the street and called them over to the car and he * * * said take this whiskey in this car and store it across the street in the alley in a house and * * * the three colored men then removed the fifty gallons of non-tax paid whiskey and hid it in two or three nearby houses. *Eddie Griffin* then returned, turned and talked to the

men standing by there and then returned to the store. * * *

* * * * *

Q. [by defense counsel] You came up, you saw *this man* in front of the store?

A. He was in the store and was called out so he came outside.

* * * *

Q. This whiskey was never actually delivered to *this man's* possession. He was told the whiskey was there and is that all?

A. That's right, sir.

The fact that Agent Boatheimer did not specifically point to the petitioner in the court room is without significance. There was no mistake in the mind of the court (R. 7, 9), the prosecutor or petitioner that Boatheimer was referring to the petitioner, the Eddie Griffin on trial.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

JUNE 1964

---

[1] Identical contentions were rejected by the Fifth Circuit in *United States* v. *Delegal*, 329 F.2d 494, pending before this Court in No. 1167, O.T. 1963.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 733880 1031